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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,390	09/15/2005	Christian Prehofer	62767 (51969)	7634
21874 7590 12/30/2008 EDWARDS ANGELL PALMER & DODGE LLP P.O. BOX 55874 BOSTON, MA 02205				
EXAMINER				
NGUYEN, STEVEN C				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/525,390

**Applicant(s)**

PREHOFFER ET AL.

**Examiner**

STEVEN C. NGUYEN

**Art Unit**

2443

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02/22/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 58-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 11/03/2005

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. **Claims 1-57** have been canceled due to inventor's preliminary amendment filed on February 22, 2005. New **Claims 58-79** are presented for examination

#### *Claim Objections*

2. **Claim 68** is objected to because of the following informalities: The claim is dependent upon a non existent claim. There is no Claim 9 in the immediate application. Examiner will construe that the claim is dependent upon Claim 58. Appropriate correction is required.

#### *Claim Rejections - 35 USC § 101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claim 79** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 79 states a "computer program product" (*Line 1*). In applicant's specification (*Paragraph 53, Lines 8-11*), applicant states that the programs defining the functions of the present invention can convey information to a computer/processor through "communication media." A communication media is considered a transmission medium which is not a process, machine, manufacture, or a composition of matter and therefore non-statutory. See MPEP § 2106.01(I)

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 58-79** are rejected under 35 U.S.C. 102(e) as being anticipated by Moshir et al (US Patent 6,990,660), hereinafter Moshir.

5. Regarding **Claim 58**, Moshir teaches:

- a. preparing a transition from an initial software configuration to a target software configuration (*Column 3, Lines 27-32 states that the invention determines of software needs upgrading and if so, the update process begins*)
- b. deciding on commitment to the target software configuration in view of a result of reconfiguration indicated through at least one further network node in the ad-hoc network (*Column 12, Lines 17-32 state that if the initial installation is successful, then the next node on the network is updated*)
- c. wherein the step of committing to the target software configuration is taken when every result of reconfiguration received at the network node from a reachable further network node is evaluated to be positive (*Column 12, Lines 17-26 state that the a successful installation must be detected before continuing with the update for every node*).

6. Regarding **Claim 59**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. wherein it further comprises a step of negotiating a maximum reconfiguration time period with at least one further network node before executing the transition from the initial software configuration to the target software configuration (*Column 12, Lines 5-16 state that failure can be detected by the target computer not notifying the monitor that a failure has occurred within a specified time. If a failure is determined, the system is rolled back. The specified time would be the maximum reconfiguration time*).

7. Regarding **Claim 60**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. wherein it further comprises a step of coordinating a start of reconfiguration at the network node with a start of reconfiguration in at least one further network node (*Column 12, Lines 17-32 state that a node is updated first and after a successful installation is confirmed, the next node will begin the update. Therefore, a start of a node is coordinated with a start of the next node once successful installation is confirmed*).

8. Regarding **Claim 61**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. determining network nodes being reachable from the reconfigured network node when ad hoc network communication is interrupted during the transition from the initial software configuration to the target software configuration (*Column 12,*

*Lines 17-32 state that when the network communication is interrupted [due to the software updating], the network nodes that are considered reachable are the ones that return either successful or failure response)*

**9.** Regarding **Claim 62**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. falling back to the initial software configuration when at least one result of reconfiguration received at the network node from a reachable further network node is evaluated to be negative (*Column 10 Lines 46-56 state that if failure occurs, the software can be removed and the node can be returned to a pre-update state or an acceptable non-updated state*).

**10.** Regarding **Claim 63**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. a step of falling back to the initial software configuration when no result of reconfiguration result is received at the network node until expiry of the maximum reconfiguration time period (*Column 12, Lines 5-16 state that failure can be detected by the target computer not notifying the monitor that a failure has occurred within a specified time. If a failure is determined, the system is rolled back*).

**11.** Regarding **Claim 64**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. a step of sending a positive reconfiguration result when the transition from the initial software configuration to the target software configuration is

successful (*Column 12, Lines 17-32 state that a successful confirmation is required before moving on to the next node*).

**12.** Regarding **Claim 65**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. a step of sending a negative reconfiguration result when the transition from the initial software configuration to the target software configuration is not successful (*Column 10, Lines 19-31 states that a monitor checks the installation to determine results of the update. If it detects a failure, there is the ability to roll back*).

**13.** Regarding **Claim 66**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. a step of retrieving software for executing the transition from the initial software configuration to the target software configuration locally from a portable electronic device (*Column 8, Lines 41-53 state that the update agent is a software component that is installed initially on the network machines, making it local*).

**14.** Regarding **Claim 67**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. a step of retrieving software for executing the transition from the initial software configuration to the target software configuration remotely via a mobile communications environment (*Column 9, Lines 20-28 and Column 6, Lines 32-43 state that the actual update must be retrieved through the network via numerous LANs*).

**15.** Regarding **Claim 68**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. a step of pre-installing software for executing the transition from the initial software configuration to the target software configuration in the network node *(Column 8, Lines 41-53 state that the update agent is a software component that is installed initially on the network machine).*

**16. Regarding Claim 69, Moshir teaches:**

a. a software reconfiguration unit adapted to prepare a transition from an initial software configuration to a target software configuration *(Column 8, Lines 41-53 state that the update agent is a software component that is able to transition software configuration); and*

b. a reconfiguration commitment unit adapted to decide on commitment to the target software configuration in view of a result of reconfiguration indicated through at least one further network node in the ad hoc network *(Column 12, Lines 5-32 state that the monitor needs to be contacted with whether or not the update was successful in order to continue on with the rest of the updates);*

c. wherein the reconfiguration commitment unit is adapted to commit to the target software configuration when every result of reconfiguration received at the network node from a reachable further network node is evaluated to be positive *(Column 12, Lines 17-32 state that each network node [for a predetermined number of nodes] must contact the monitor with a successful installation message before the update is made available to all nodes).*

**17. Regarding Claim 70, the limitations of Claim 69 have been addressed above.**

Moshir teaches:



a. a negotiating unit adapted to negotiate a maximum reconfiguration time period with the at least one further network node before executing the transition from the initial software configuration to the target software configuration (*Column 12, Lines 5-16 state that failure can be detected by the target computer not notifying the monitor that a failure has occurred within a specified time. If a failure is determined, the system is rolled back. The monitor must have a negotiating unit inside of it in order to determine what amount of time is proper before failure is determined*).

**18.** Regarding **Claim 71**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. a reconfiguration coordination unit adapted to coordinate a start of reconfiguration at the network node with a start of reconfiguration in the at least one further network node (*Column 12, Lines 17-32 state that the update server is notified by the monitor of a successful installation before moving onto the next node. Therefore, a start of a node is coordinated with a start of the next node once successful installation is confirmed*).

**19.** Regarding **Claim 72**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. a connectivity unit adapted to determine network nodes being reachable from the reconfigured network node when ad hoc network communication is interrupted during the transition from the initial software configuration to the target software configuration (*Column 12, Lines 17-32 state that when the network*

*communication is interrupted [due to the software updating], the network nodes that are considered reachable are the ones that return either successful or failure response).*

**20.** Regarding **Claim 73**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. wherein the reconfiguration commitment unit is adapted to decide on falling back to the initial software configuration when at least one result of reconfiguration received at the network node from a reachable further network node is evaluated to be negative (*Column 10 Lines 46-56 state that if failure occurs, the software can be removed and the node can be returned to a pre-update state or an acceptable non-updated state*)

**21.** Regarding **Claim 74**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. wherein the reconfiguration commitment unit is adapted to decide on falling back to the initial software configuration when no result of reconfiguration result is received at the network node until expiry of the maximum reconfiguration time period (*Column 12, Lines 5-16 state that failure can be detected by the target computer not notifying the monitor that a failure has occurred within a specified time. If a failure is determined, the system is rolled back*).

**22.** Regarding **Claim 75**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. a communication unit adapted to send a positive reconfiguration result when the transition from the initial software configuration to the target software

configuration is successful (*Column 12, Lines 17-32 state that a successful confirmation is required before moving on to the next node*).

**23.** Regarding **Claim 76**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. a communication unit adapted to send a negative reconfiguration result when the transition from the initial software configuration to the target software configuration is not successful (*Column 10, Lines 19-31 states that a monitor checks the installation to determine results of the update. If it detects a failure, there is the ability to roll back*).

**24.** Regarding **Claim 77**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. a software retrieval unit adapted to retrieve software for executing the transition from the initial software configuration to the target software configuration locally from a portable electronic device (*Column 8, Lines 41-53 state that the update agent is a software component that is installed initially on the network machines, making it local*).

**25.** Regarding **Claim 78**, the limitations of Claim 69 have been addressed above.

Moshir teaches:

a. wherein the software retrieval unit is further adapted to retrieve software for executing the transition from the initial software configuration to the target software configuration remotely via a mobile communication environment (*Column 9,*

*Lines 20-28 and Column 6, Lines 32-43 state that the actual update must be retrieved through the network via numerous LANs).*

**26.** Regarding **Claim 79**, the limitations of Claim 58 have been addressed above.

Moshir teaches:

a. a computer program product directly loadable into the internal memory of a network node of an ad hoc network, comprising software code portions for performing the steps of Claim 58, when the product is run on a processor of the network node (*As Moshir's invention is meant to be run on a computer network, it must be a computer program that is loaded into the internal memory in order for the computer to understand the instructions*).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN C. NGUYEN whose telephone number is (571)270-5663. The examiner can normally be reached on Monday through Thursday with alternating Friday 7:30AM - 5:00PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on (571) 272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S.C.N./  
Examiner, Art Unit 2443  
12/16/2008

**/Tonia LM Dollinger/  
Supervisory Patent Examiner, Art Unit 2443**